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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,683	03/31/2004	James N. Rothbarth	RHB 8982.4	8322

321 7590 03/29/2007  
SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER
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ROSE, HELENE ROBERTA

ART UNIT	PAPER NUMBER
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2163

NOTIFICATION DATE	DELIVERY MODE
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03/29/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/814,683

Applicant(s)

ROTHBARTH ET AL.

Examiner

Helene Rose

Art Unit

2163

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 and 3-14.  
Claim(s) withdrawn from consideration: 2.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant Arguments filed on 3/21/2007 - have been fully considered but are not persuasive.

Applicant arguments as it relate to claim 13, and in which applicant argues prior art fails to teach "selecting delivering the portable computer readable medium to a user of the destination computer based on an amount of data in the one or more files to be transferred, wherein the portable computer readable medium is physically delivered to the destination user when the amount of data to be transferred is greater than or equal to a target amount, and wherein the one or more files are transferred from the first computer to the second computer via a communication network when the amount of data to be transferred is less than the target amount".

And applicant further states, Claim 13 recites a method including backup file transfer via a communication network and via physical delivery, i.e. two different types of transfer are recited.

**Examiner's Response:**

Examiner is not persuaded. Referring to "selecting delivering the portable computer readable medium to a user of the destination computer based on an amount of data in the one or more files to be transferred" – SEE McCLAIN - column 3, lines 15-20, wherein transmitting the local file to a data center, that is remote from the user computer, wherein data center is interpreted to be a centralized storage facility used by an application service provider to retain database information, and wherein the term "remote" is interpreted to be resources that aren't directly connected to a particular workstation, which is interpreted to be "portable", in which the data center is "remote" from the user computer, to render a remote version with the data center being accessible via a computer network, which is interpreted to be equivalent to "delivering the portable computer readable medium to a user of the destination computer based on an amount of data in the one or more files to be transferred".

Also, SEE McCLAIN - column 3, lines 53 - 55, when the size of the transfer chunks equals a predetermined size, the transfer chunks is transmitted to the data center, wherein this is interpreted to be "selecting delivering to a user of the destination computer based on an amount of data in the one or more files to be transferred", wherein data center is interpreted to be a centralized storage facility which is interpreted to be equivalent to "physical structure" and wherein the "chunks is transmitted to the data center", is interpreted to be "physically delivered".


SEE McCLAIN - columns 3 and 4, lines 63-67 and lines 1-4, wherein periodically copying remote versions of file blocks at the data center onto a portable data storage medium, wherein local files are restored by copying remote versions of file blocks from the portable data storage medium when the remote versions that are stored on the portable data storage medium are at least as current as the remote versions stored at the data center.

SEE McCLAIN - column 6, lines 39-48, wherein plural user computers 24, e.g., personal computers or laptop computers, communicate with the network 14 via respective user modems 26 or other appropriate network connection, wherein this is also equivalent to "portable computer readable medium", and each user computer 24 includes a respective software-implemented back up module 28 that undertakes the inventive steps of the present invention, wherein the back up modules 28 can be remote from, but accessible to, the user computers 24, wherein the backup module is remote but accessible to the user computer, and therefore interpreted to be equivalent to "backup file transfer via a communication network and via physical delivery".

AND Referring to "wherein the portable computer readable medium is physically delivered to the destination user when the amount of data to be transferred is greater than or equal to a target amount" - SEE BAILEY - column 9, lines 23-30, wherein changes to the sector are large which consumes over one half the number of bytes in the sector rather than the many changes within the sector, wherein the goal of using is to store only the relatively small changes in the CDA, while large changes are not stored wherein changes to the sector are large and the goal is to store only the relatively small changes, which is interpreted to be "amount of data to be transferred is greater or equal to the target amount".

AND "wherein the one or more files are transferred from the first computer to the second computer via a communication network when the amount of data to be transferred is less than the target amount" - SEE BAILEY - column 11, lines 35-41, wherein the transmission file is a file of finite size determine by the channel capacity analysis such that less than all files to be transmitted may fit within the transmission file, wherein only files within the transmission files are transmitted to the backup site and when the transmission is file is full no other files may be transmitted to the backup site until all the contents of the transmission file have been transmitted to the backup site, which is interpreted to be equivalent to "and wherein the one or more files are transferred from the first computer to the second computer via a communication network when the amount of data to be transferred is less than the target amount".

Therefore, the rejection is maintained as in the Final Office Action mailed out on 12/14/2006.

  
**DON WONG**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**

